

## **DISTRICT OF COLUMBIA PUBLIC SCHOOLS**

### **NOTICE OF FINAL RULEMAKING**

The Chancellor of the District of Columbia Public Schools (DCPS), pursuant to section 103 of the District of Columbia Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-172(c) (2012 Repl.)), and Mayor's Order 2007-186, dated August 10, 2007, hereby gives notice of the adoption of the following amendment to repeal Section 2405 (Student Grievance Procedure) of Chapter 24 (Student Rights and Responsibilities) of Subtitle E (Original Title 5), Title 5 (Education), of the District of Columbia Municipal Regulations (DCMR), and replace it with a new Section 2405 in Subtitle B (District of Columbia Public Schools), Title 5 (Education), of the DCMR.

The purpose of this rule is to amend the language regarding the procedures for the filing, investigation, and resolution of complaints or grievances filed by students in cases of discrimination, bullying, or harassment. The amendment is necessary because DCPS must ensure that its grievance procedures contain language that satisfies requirements set forth by the U.S. Department of Education, Office of Civil Rights.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 29, 2013 at 60 DCR 16340. No changes have been made to the text of the proposed rulemaking. Additionally, the "Student Grievance Procedure Regulations Approval Resolution of 2013" was submitted to the Council on December 3, 2013. The Council neither approved nor disapproved the rules during the 45-day period of review, and so these rules are deemed approved pursuant to Section 103 of the Act. These rules were adopted as final on May 9, 2014, and will become effective upon publication.

**Section 2405, STUDENT GRIEVANCE PROCEDURE, of Chapter 24, STUDENT RIGHTS AND RESPONSIBILITIES, of Subtitle E, ORIGINAL TITLE 5, Title 5, EDUCATION, of the DCMR is repealed.**

**A new Section 2405, STUDENT GRIEVANCE PROCEDURE, of Subtitle B, DISTRICT OF COLUMBIA PUBLIC SCHOOLS, of Title 5, EDUCATION, of the DCMR is added to read as follows:**

#### **2405 STUDENT GRIEVANCE PROCEDURE**

- 2405.1 The grievance procedure set forth in this section shall apply to all grievances or complaints brought for any suspected violation of the following laws:
- (a) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
  - (b) Title II of the Americans with Disabilities Act of 1990, which also prohibits discrimination on the basis of disability;

- (c) Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- (d) Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin;
- (e) The District of Columbia Human Rights Law, Title 2, Chapter 14 of the D.C. Official Code, which prohibits discrimination on the basis of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, political affiliation, source of income, and disability; or
- (f) The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.

2405.2 The grievance procedure set forth in this section shall also apply to all grievances or complaints brought in the following instances:

- (a) Where it is alleged that any student or group of students is being denied access to an adequate educational opportunity;
- (b) Where it is alleged that the rights of students, or any individual student, are being denied or abridged;
- (c) Where it is alleged that any student or group of students is being subjected to an arbitrary or unreasonable regulation, procedure, or standard of conduct;
- (d) Where it is alleged that any student is being denied participation in any school activity for which the student is eligible;
- (e) Where a student is a victim of bullying or harassment, including sexual harassment; and
- (f) Any other violation of a right granted by law that does not have a specific grievance procedure or hearing process provided in this title.

2405.3 A student who has been suspended or expelled from school shall not bring a grievance pursuant to this section, but may file an appeal according to the procedure in Chapter B-25.

2405.4 An individual bringing a grievance about an issue set forth in §§ B 2405.1 or B 2405.2 shall follow the procedures contained in this section. An individual who is a victim of bullying or harassment, including sexual harassment, may follow these procedures or the procedures in § B 2405.5. A grievance may be filed by a parent

or guardian on behalf of a student, as consistent with § B 2401.15 of this chapter.

- (a) The individual bringing the grievance (the grievant) may make an informal complaint to the principal or other school official in charge of the program or activity. If the grievant makes a complaint to a teacher or administrator other than the principal or official in charge of the program or activity, that person shall advise the principal or official in charge of the program or activity of the nature of the complaint.
- (b) If the principal is the subject of the grievant's complaint or otherwise involved in the circumstances surrounding the complaint, the grievant shall make an informal complaint to the Instructional Superintendent with jurisdiction over the principal's school.
- (c) The person who receives the informal grievance shall investigate and attempt to resolve the problem through informal means, including but not limited to, meetings, conferences, and discussions. The person shall also make written documentation of all steps taken to investigate the matter.
- (d) A resolution in the informal process shall be proposed, or a decision issued, by the principal or other school official to the grievant within ten (10) school days of the day that the grievant made the informal complaint.
- (e) A grievant who is dissatisfied with the outcome of -- or chooses not to use -- the informal process, may file a written grievance with the principal or other responsible school official. Written grievances must be filed within forty-five (45) calendar days of the incident or circumstance being grieved or ten (10) calendar days of the completion of the informal process, if any, whichever is longer. The timeframes for submission shall be tolled in instances where the grievant did not comprehend or was not aware of the harassment.
- (f) All complaints should include the following information, to the extent that is known by the grievant:
  - (1) The name, grade, and school attended by the student;
  - (2) The date, approximate time, and location of the incident;
  - (3) The type of bullying or harassment that was involved in the incident;
  - (4) The identity of the person(s) who committed the alleged acts of harassment;
  - (5) If the alleged harassment was directed towards other person(s), the

identities of such persons;

(6) Whether any witnesses were present, and their identities; and

(7) A specific factual description of the incident, including any verbal statements or physical contact.

- (g) The principal or other school official shall attempt to resolve the written grievance by beginning a formal investigation, including but not limited to conducting conferences with the grievant(s), students, parents, teachers, other school officials, and other involved parties and, when applicable, consultation with legal counsel, the Title IX Coordinator or the Section 504 Coordinator. The investigation shall also include the examination of any information submitted by the grievant and interviews with any witnesses identified by the grievant. The appropriate Instructional Superintendent shall be informed of the written grievance and investigation and may be consulted by the principal or other school official in an attempt to resolve the grievance.
- (h) The principal or other school official who investigates a written grievance shall provide a written response to the grievant and the Instructional Superintendent.
- (i) The written response shall be provided within ten (10) school days of the receipt of the written grievance; the parties should be notified if the investigation will take longer, including the reasons for the delay and the anticipated time frame.
- (j) If the grievant is not satisfied with the response of the principal, the grievant may file an appeal with the Instructional Superintendent with jurisdiction over the school which the student attends or the grievance arose. If the Instructional Superintendent issued the initial response, the grievant may file an appeal with another school official designated by the Chancellor. The appeal shall be filed within ten (10) calendar days of receipt or notice of the initial response.
- (k) The Instructional Superintendent or other designee shall attempt to resolve the grievance by reviewing the principal's investigation and findings, and conducting further investigation of the grievance, including meeting with all involved parties and consulting with legal counsel as appropriate.
- (l) The written response shall be provided within ten (10) school days of the receipt of the appeal.
- (m) If the grievant is not satisfied with the response or the Instructional Superintendent or other designee is unable to achieve an adequate

resolution, either the grievant or the Instructional Superintendent, or other designee may, within ten (10) calendar days of the written response, request that the grievance be brought before a grievance review panel to ensure appropriate and fair resolution of the grievance. The panel shall be comprised of three (3) persons appointed by the Chancellor or designee, and may include the Section 504 Coordinator, the Title IX Coordinator, individuals from the DCPS Office of Compliance, Office of the General Counsel, other Instructional Superintendents or school officials, and other disinterested persons with training and knowledge about the issues raised by the grievance.

- (n) In all cases brought before the review panel, the panel shall provide the Instructional Superintendent, or other designee with written findings and recommendations for suggested implementation by the Instructional Superintendent, or other designee and the principal. The findings and recommendations shall be issued within ten (10) school days of receipt by the panel of the request referenced in § B 2405.4(m).
- (o) Within five (5) days of receipt of the findings and recommendations, the Instructional Superintendent, or other designee shall issue a final administrative decision, which shall be the final administrative decision of the school system. The Instructional Superintendent or other designee shall provide written notice of the decision to the grievant, the principal, and, if appropriate, the grievant's parent or guardian.
- (p) A grievant may also file a complaint directly with the U.S. Department of Education, Office of Civil Rights without utilizing, or following the completion of, the procedures contained in this section. See <http://www.ed.gov/ocr/complaintprocess.html> or call (202) 453-6020 for further information.
- (q) A grievant may also file a complaint directly with the District of Columbia Commission on Human Rights without utilizing the procedures contained in this section. See <http://www.ohr.dc.gov> or call (202) 727-4559 for further information.

2405.5 A grievant who is a victim of bullying or harassment, including sexual harassment, by an employee, students, or third parties may, at his or her option, choose to follow this procedure to resolve his or her complaint:

- (a) An individual who is a victim of bullying or harassment may complain orally or in writing to any teacher, administrator, or counselor.
- (b) If the grievant files his or her complaint orally, the teacher, administrator, or counselor shall prepare a written report of the conversation with the grievant. If the grievant complains in writing, it may be in any form. All

complaints should include the following information, to the extent that is known by the grievant:

- (1) The name, grade, and school attended by the student;
  - (2) The date, approximate time, and location of the incident;
  - (3) The type of bullying or harassment that was involved in the incident;
  - (4) The identity of the person(s) who committed the alleged acts of harassment;
  - (5) If the alleged harassment was directed towards other person(s), the identities of such persons;
  - (6) Whether any witnesses were present, and their identities; and
  - (7) A specific factual description of the incident, including any verbal statements or physical contact.
- (c) All complaints and information contained therein will be kept confidential to the extent provided by law.
- (d) The complaint shall be reported to the principal no later than the end of the next school day following the report of the complaint. The teacher, administrator, or counselor shall report complaints of severe or pervasive bullying or harassment no later than the end of the school day that the report of the complaint was made.
- (e) If any principal, administrator or other school employee responsible for overseeing or investigating bullying or harassment complaints are implicated in the complaint, or have any actual or perceived conflict of interest, the complaint will be filed with the Instructional Superintendent with jurisdiction over the school the student attends or at which the grievance arose for action.
- (f) The principal is responsible for ensuring that all complaints are properly investigated and processed in accordance with these procedures, but may delegate responsibility for processing bullying and harassment complaints. The principal or designee shall take the following actions:
- (1) Within one (1) school day – schedule and complete a confidential discussion of the allegations with the grievant. The subject of the allegations shall not be notified or be present during such discussion.

- (2) Within ten (10) school days – the principal or designee shall complete his or her investigation and prepare a written report that includes a finding as to whether the allegations of bullying or harassment are substantiated; the parties should be notified if the investigation will take longer, including the reasons for the delay and the anticipated time frame. The investigation shall include, but not be limited to, the following matters: 1) interview with the grievant; 2) interview with the alleged victim (if not the grievant); 3) interviews with the subject(s) alleged to have committed the harassment or bullying; 4) interviews with employees and others (including students) who have knowledge of the facts alleged in the complaint (including those identified by the student who filed the complaint); and 5) review of all pertinent records (including those identified by the grievant). The report shall reflect the results of the investigation and shall be provided to all parties to the complaint. The report shall include a description of any follow up actions taken or to be taken, including any intervention or disciplinary actions (to the extent permitted by the Family Educational Rights and Privacy Act (20 U.S.C. §1232g; 34 C.F.R. §§ 99.1 *et seq.*)).
- (3) If the grievant is dissatisfied with the findings or actions contained in the report, the grievant may file a written grievance with the Instructional Superintendent with jurisdiction over the school the student attends or the location at which the grievance arose within ten (10) calendar days of the issuance of the principal's report. If such a grievance is filed, the process specified in §§ 2405.4(k)-2405.4(o) shall apply.
- (g) A grievant may also file a complaint directly with the U.S. Department of Education, Office of Civil Rights without utilizing, or following the completion of, the procedures contained in this section. See <http://www.ed.gov/ocr/complaintprocess.html> or call (202) 453-6020 for further information.
- (h) A grievant may also file a complaint directly with the District of Columbia Commission on Human Rights without utilizing the procedures contained in this section. See <http://www.ohr.dc.gov> or call (202) 727-4559 for further information.

2405.6 The final decision of the Instructional Superintendent shall be the final administrative decision of the school system.

2405.7 Copies of the final decision shall be given to all parties.

- 2405.8 A copy of the Instructional Superintendent's final decision shall be sent to the Chancellor and the Chief of Schools.
- 2405.9 No grievant shall be subject to any retaliation from any teacher or school official. A grievant may use these procedures to complain of retaliation by students, teachers, or employees.